



*The Commonwealth of Massachusetts*  
*Department of the State Treasurer*  
*Alcoholic Beverages Control Commission*  
*Boston, Massachusetts 02114*

*Steven Grossman*  
*Treasurer and Receiver General*

NOTICE OF SUSPENSION

*Kim S. Gainsboro, Esq.*  
*Chairman*

May 21, 2014

**MALDEN LODGE #965 B.P.O. ELKS**  
**37 FLORENCE ST.**  
**MALDEN, MA 02148**  
**LICENSE#: 064600020**  
**VIOLATION DATE: 11/20/2013**  
**HEARD: 05/06/2014**

After a hearing on May 6, 2014, the Commission finds Malden Lodge #965 B.P.O. Elks in violation of 204 CMR 2.05 (1) Permitting Gambling.

Based on the evidence, **suspends the licensee's license for a total of two (2) days to be served. The suspension shall commence on Wednesday, July 9, 2014, and terminate on Thursday, July 10, 2014.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, July 9, 2014 at 9:00 A.M. It will be returned to the licensee Friday, July 11, 2014.

You are advised that pursuant to the provisions of M.G.L. c.138 §23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form. All checks must be certified and accompanied by the enclosed form, which must be signed by a Massachusetts Licensed Accountant.

You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kim S. Gainsboro  
Chairman

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Tara Kelleher, Investigator  
Caroline Guarino, Investigator  
Jan Kujawski, Investigator  
Christopher Temple, Investigator  
Administration  
File



*The Commonwealth of Massachusetts*  
*Department of the State Treasurer*  
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**DECISION**

*Kim J. Gainsboro, Esq.*  
*Chairman*

**MALDEN LODGE #965 B.P.O. ELKS**  
**37 FLORENCE ST.**  
**MALDEN, MA 02148**  
**LICENSE#: 064600020**  
**VIOLATION DATE: 11/20/2013**  
**HEARD: 05/06/2014**

Malden Lodge #965 B.P.O. Elks (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, May 6, 2014, regarding an alleged violation of M.G.L. 204 CMR 2.05 Permitting Gambling. Prior to the commencement of the hearing, the licensee stipulated to the violation alleged in Investigator Kelleher's Report.

The following documents are in evidence:

1. Investigator Kelleher's Investigative Report dated December 9, 2013; and
2. Licensee's Stipulation of Facts.

There is one (1) audio recording of this hearing.

**FACTS**

1. On Wednesday, November 20, 2013 at approximately 2:00 p.m., Investigators Kelleher, Guarino, Kujawski and Temple conducted an investigation of the business operation of the above listed licensee.
2. Upon entering the bar, Investigators observed three electronic video devices ("Liars Casino", "Double Up", and "Joker Poker"). Investigators identified themselves to the bartender, later identified as Eugene Lynch.
3. Mr. Lynch was interviewed about the electronic video devices in the bar lounge and he advised that they reward with prizes of gift cards, but that he can "give cash if they ask for it". Mr. Lynch provided the Investigators with a white piece of paper with printing on it, which indicated the machine number and the "number of credits towards gift card of choice". An inspection of the bar area resulted in a finding of 8.5" x 11" sheet of paper with "Machine one" and "Machine two" and a columns titled "out" and "in" with numbers filled in. Mr. Lynch advised that these numbers match up to the two counters behind the bar for the machines that are hardwired ("Liars Casino" and "Joker Poker").
4. Mr. Lynch advised that no member of the board was present; he was able to contact via phone a member, identified as Richie Keyes. Investigator Guarino spoke with this individual on the phone who advised that the licensee payoffs for winnings on the electronic video devices are with gift cards and cash, "winner's preference". Mr. Keyes further stated that the electronic video

devices pay out at a rate of .25c per point, which the Investigators know from their training and experience, as being the standard payoff rate for illegal gambling devices in Massachusetts. Mr. Keyes further stated to the Investigators that the vendor is Able Vending and the split is 60% of the net revenue for the club and 40% of the net revenue for Able Vending.

5. Mr. Lynch was asked if he knew who from Able Vending leases the machines and he responded, Jimmy Mazipicca who is a "member in every club in the city" to include the Malden Lodge.
6. An inspection of the hardwired machines ("Liars Casino" and "Joker Poker") showed that they do not accept currency; the bartender gives the credits via the boxes. Investigators also took notice of the following attributes which, based on the Investigators' training and experience, indicated that the electronic devices were being utilized as gambling devices:
  - Each device had markings that indicated "for amusement only"
  - The capability to double the bet by selecting the double up button.
7. Mr. Lynch advised that the money for these machines is taken by the bartender, who registers the bet via the hardwired boxes, providing the player with "4 credits for a dollar".
8. In continuance of their investigation and based on their training and experience, the Investigators made the following observations: the one machine which was not hardwired ("Double Up"), the electronic device was being utilized as gambling device:
  - Device had markings that indicated "for amusement only"
  - After inserting the required amount of money into the device, an investigator selected the number of credits (the amount to bet). The device "registered" the bet by displaying the number of credits selected
  - Device accepted dollar bills ranging from \$1, 5, 10 and 20
  - The capability to double the bet by selecting the double up button
  - Device had a "knock off" mechanism in the form of a push button on the back of the machine or a ticket button which reset the winning credits to zero.
9. Investigator Temple placed a dollar bill into the "Double Up" device and proceeded to register a bet. Investigator Temple pressed a button on the back right of device (knock off switch) and the Investigators observed the credits reset.
10. Investigators advised Mr. Keyes and Mr. Lynch that a report would be filed with the Commission charging the licensee with permitting gambling on the licensed premises.

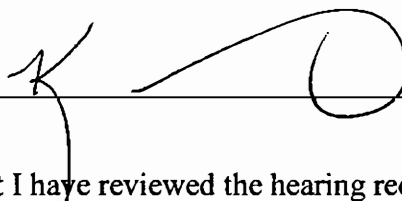
### CONCLUSION

Based on the evidence, the Commission finds the licensee violated 204 CMR 2.05 Permitting Gambling. Therefore, the Commission **suspends the license for five (5) days of which two (2) days will be served and three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur.**

**In addition, the licensee must not possess in or on the licensed premises any automatic amusement device or video poker machine.**

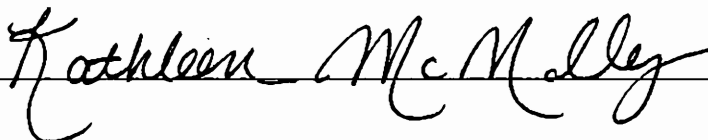
### ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman



I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision

Kathleen McNally, Commissioner



Dated: May 21, 2014

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Tara Kelleher, Investigator  
Caroline Guarino, Investigator  
Jan Kujawski, Investigator  
Christopher Temple, Investigator  
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